No. 8010

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

CHARLES LORAINE BRYMER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

BRIEF OF APPELLANT.

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STATEMENT.

The petitioner and appellant, Charles Loraine Brymer, is an alien and filed his petition for citizenship in the District Court of the Western District of Washington, Northern Division at Seattle.

Appellant was born in York County, N. B., Canada, on November 30, 1874. Appellant first entered the United States through the State of Maine during the year of 1892. That thereafter and on November 9, 1895, petitioner was sentenced to the Colorado state penitentiary at Canyon City for a period of eight years upon conviction of voluntary manslaughter. The District Judge, however, does not certify that the conviction was for voluntary manslaughter, but certifies that to his knowledge and recollection petitioner

testified that he had been convicted of the crime of involuntary manslaughter. The petitioner was discharged from the penitentiary on January 30, 1901, by reason of the expiration of his sentence and that thereafter continued to reside in the United States until 1906, when he returned to Canada and reentered on or about October 20, 1907, through Sumas, Washington, and has continuously resided in Seattle, State of Washington, since said time.

The petitioner was denied citizenship upon the grounds that his entry into the United States on October 20, 1907, was unlawful and in violation of the United States immigration laws in effect at the time of his entry (St. 6, Tr. 8). Several witnesses gave evidence as to petitioner's moral character but as that matter is not now in dispute it will not be discussed in this brief.

SPECIFICATIONS OF ERROR.

For specifications of error the appellant urges:

I.

That the District Court erred in making and entering its order of October 7, 1935, denying the petition of petitioner for admission to citizenship in the United States of America, to which order petitioner noted exception and exception allowed.

II.

That the District Court erred in denying petitioner's application and petition for citizenship in the United States of America.

ARGUMENT.

The petitioner will concede that the right of an alien to naturalization is a privilege accorded by the People of the United States, as declared through its statutes, and further that naturalization laws will and should be construed strictly as against the applicant for citizenship.

Johannessen v. U. S., 225 U. S. 227, 32 St. Ct. 613;

U. S. v. Ginsberg, 243 U. S. 472, 37 S. Ct. 422;

U. S. v. Ness, 245 U. S. 319, 38 S. Ct. 118.

It will be noted that the District Court Judge denied petitioner the right to citizenship on the sole ground that his entry in the United States on October 20, 1907, was unlawful. The theory upon which this was based is that he had committed a crime involving moral turpitude at the time of entry, basing it upon section two of the Act of February 20, 1907, as incorporated in the Immigration Act of February 5, 1917, as section three.

The petitioner's position is simply this, that his entry in 1891 was lawful and that his re-entry in 1907 was lawful in that he was a citizen of Canada and that by virtue of the laws of February 1, 1924, subdivision F, paragraph One, Section 13-B, Act of 1924; and the further ground that he was only temporarily out of the United States, the record being silent as to any intent to give up his residence of practically sixteen years in the United States at the time he returned to Canada in 1906, and therefore had not been guilty of a crime committed prior to entry.

U. S. v. Linklater v. Commissioner of Immigration at Ellis Island, 36 F. (2d) 239.

Petitioner is cognizant of the case of *In re Scriver,* 9 Federal Supp. 478, in which a petitioner was denied citizenship on similar ground to that stated by the Court in this case; however, it will be noted that the question at issue in the *Scriver* case is whether an alien, against whom a warrant of deportation is outstanding, is entitled to become a naturalized citizen. It will be further noted that petitioner's visit to Canada in the *Scriver* case was in 1929 and subsequent to the passage of the Immigration Acts of 1917 and 1924, respectively.

CONCLUSION.

The petitioner is now a man of advanced years and is shown to have been a resident of the United States practically continuously from 1891, or for a period of forty-four years, all his property and friends are situated in the United States.

While it is conceded that the matter of citizenship is a privilege, nevertheless, a long continued residence, together with evidence of good moral character for many years, should be given the utmost consideration, and petitioner should not be denied citizenship on technical grounds.

We therefore submit that petitioner should have been granted citizenship.

Respectfully submitted,
THOMAS D. PAGE,
Attorney for Appellant.